

Federal taxes are not deductible from gross receipts for purposes of computing sales tax when the incidence of the tax falls upon the manufacturer, wholesaler, or importer. See 86 Ill. Adm. Code 130.445. (This is a GIL).

August 25, 2000

Dear Xxxxx:

This letter is in response to your letter dated June 21, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

I would like to get a determination on the taxability of Federal Motor Fuel tax charged to a retailer by the distributor for sales tax purposes. The State gasoline taxes are deductible on Line 7, P. 2 of the ST-1, Sales and Use Tax Return. However there is no line for Federal motor fuel taxes charged to the retailer by the distributor when they buy the gas for resale. The taxes are passed along to the final consumer in the sale price of the gasoline at the pump, therefore these taxes are included in the total sales figure reported on Line 1, P. 1. It would seem to me that if the federal motor fuel taxes are not deductible, then the retailer is paying State Sales tax on the Federal motor fuel taxes. In short, the retailer, and ultimately the consumer, is paying a tax on a tax, which does not seem right.

Please clear this up for us. Is there a place we should be deducting this tax or should we just include the Federal Motor fuel tax with the other sales tax and deduct it that way. Or is it just not deductible? Please advise.

Federal taxes are not deductible from gross receipts for purposes of computing sales tax when the incidence of the federal tax falls upon the manufacturer, wholesaler, or importer. See the enclosed copy of 86 Ill. Adm. Code 130.445. These taxes are considered to be a part of retailers' costs of doing business, which are never deductible when computing Retailers' Occupation Tax liability. The Federal excise tax on fuel is not deductible from gross receipts when determining the sellers' Retailers' Occupation Tax liability because the incidence of the Federal excise tax on fuel falls upon the manufacturer, wholesaler, or importer rather than the customer or end user.

Enclosed is a copy of 86 Ill. Adm. Code 130.435 regarding the exclusion or inclusion of State and Local Taxes Other Than Retailers' Occupation Tax. These taxes are treated similarly to the

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Federal taxes described above. State and local tax, other than Retailers' Occupation Tax, that is imposed on the sale of tangible personal property is not included in gross receipts subject to Retailers' Occupation Tax. However, when manufacturers or importing distributors bear the legal incidence of the tax, that tax is includable in gross receipts subject to Retailers' Occupation Tax.

As stated in Section 130.435, sellers of motor fuel may deduct the Illinois Motor Fuel Tax collected by such sellers with respect to those sales because the incidence of the Illinois Motor Fuel Tax is on the consumer and is not considered to be part of the selling price of the fuel. See Section 130.435(a)(1). However, the incidence of the State Underground Storage Tax (UST Tax) is not imposed on the consumer, but rather on receivers. Therefore, the UST Tax is includable in gross receipts subject to Retailers' Occupation Tax liability.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Martha P. Mote
Associate Counsel

MPM:msk
Enc.